

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN POTTS,
Petitioner,
v.
J. GASTELO,
Respondent.

Case No. 1:20-cv-01236-NONE-HBK

ORDER GRANTING PETITIONER'S
MOTION TO AMEND PETITION

(Doc. No. 12)

Petitioner Kevin Potts, a state prisoner, initiated this action by filing a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). Petitioner filed a motion to “‘Amend’ Lodge Additional Information in Support of Habeas Petition,” which the court construes as a motion to amend the petition. (Doc. No. 12).

The Federal Rules of Civil Procedure are to be applied to habeas proceedings, to the extent that they are not inconsistent with the habeas statutory provisions and habeas rules. *Rules Governing Section 2254 Cases in the United States District Court*, R.12. Consequently, pursuant to Rule 15(a), petitioner may amend his petition “once as a matter of course.” Fed. R. Civ. P. 15(a)(1)(B). The court’s acceptance of the filing of the amended petition, however, should not be implied as a waiver of Fed. R. Civ. P. 15(c) or of the one-year federal statute of limitations set

1 forth in 28 U.S.C. § 2244(d).

2 The amended petition supersedes the original petition, *Lacey v. Maricopa County*, 693 F.
3 3d 896, 907 n.1 (9th Cir. 2012) (en banc), and must be complete on its face without reference to
4 the prior petition, *see* E.D. Cal. Local Rule 220.¹ The amended petition shall incorporate all of
5 petitioner's grounds for relief in one pleading.. .
6

7 **Accordingly,**

- 8 1. Petitioner's construed motion to amend the petition is **GRANTED**. (Doc. No. 12).
9 2. The **clerk of court** is directed to send petitioner a blank habeas corpus petition form.
10 3. Petitioner must use this case number and title the form "First Amended Petition."
11 4. Petitioner shall file his First Amended Petition within thirty days from the date on this
12 Order.
13

14 IT IS SO ORDERED.

15 Dated: December 17, 2020

16 
17 HELENA M. BARCH-KUCHTA
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27

28 ¹ Petitioner must include all information to support his claims with his amended petition.